

**HOUSE INSURANCE COMMITTEE
RESPONSE TO FORMAL REQUEST FOR INFORMATION**

INTERIM CHARGE NO. 1-HB 1900

**SUBMITTED BY THE
ASSOCIATION OF FIRE AND CASUALTY COMPANIES OF TEXAS (AFACT)**

WRITTEN COMMENTS:

BACKGROUND ON AFACT & TWIA. AFACT is a trade association that provides advocacy and input on legislative and regulatory insurance issues important to the State of Texas. AFACT has been in business over 70 years and only operates in Texas. AFACT has demonstrated consistent leadership on TWIA issues since the inception of TWIA in 1971. AFACT members are required to be members of TWIA and have paid their percentages to TWIA for Hurricane Harvey. TWIA has assessed all insurers over \$380 Million so TWIA will have sufficient funds to pay for Hurricane Harvey losses. AFACT proactively worked with Sen Babe Schwarz during the passage of the original TWIA act in 1971 and has worked with members for meaningful reform in many areas important for the viability of TWIA and windstorm insurance in Texas. AFACT was one of the few trade associations that supported important changes made in 2015 through SB 900. Reforms such as the use of installment plans, and streamlining the processing of renewals contained in SB 615 and HB 1900 were reforms recommended and supported by AFACT.

Reinsurance. After the passage of HB 1900, it was argued by some coastal advocates that HB 1900 required private insurers to pay for TWIA's total reinsurance for 2020. \$80 Million was the total amount of all reinsurance for TWIA. HB 1900 only required an assessment for the "excess" reinsurance above the 1:100 amount required by law. The arguments of the proponents were submitted to the Texas Attorney General in a formal request for opinion. AFACT filed a brief with Attorney General Paxton concerning this issue involving HB 1900.¹ On May 6, 2020, the AG issued opinion KP-0302 that addressed the questions on HB 1900 and reinsurance. In this opinion, the AG correctly concluded that HB 1900 does not require private insurers to pay for all of the cost of TWIA's reinsurance. Unfortunately, there continue to be misconceptions and erroneous conclusions about HB 1900 and its requirements for TWIA reinsurance.

AFACT urges the Committee to review and accept the legal conclusions in AG opinion KP-0302 on HB 1900. A copy is attached to these comments.

TDI Rulemaking. The Texas Department of Insurance has proposed rules and received comments on loss funding rules to implement HB 1900. AFACT submitted comments to TDI on the proposed rules. These and other comments are under consideration. A copy of AFACT's comments are attached to this document.

An important change in HB 1900 was the requirement that TWIA use only its premium and other revenue can only be used to pay for losses in a catastrophe year and cannot be used to pay for

¹ In the interim hearing held in Rockport, Texas, coastal representatives repeated the claim that HB 1900 had been violated and the entire TWIA reinsurance costs should have been paid through an additional assessment.

losses in a subsequent year. This statutory change was argued as being consistent with the funding requirements in Chapter 2210 of the Insurance Code.

AFACT would request that the Committee support AFACT's comments on an existing rule relating to assessments of insurers that is inconsistent with the concept that amounts should be determined each catastrophe year as opposed to subsequent years. The Department adopted a rule in 28 TAC §5.4162(b) that requires assessments to be determined in the year the assessment is made instead of the catastrophe year. This rule has caused TWIA to use several different years before an insurer will know the correct amount that should have been paid for Hurricane Harvey. For example, Hurricane Harvey hit in 2017. The first two Harvey assessments were made in 2018 and TWIA used the 2017 participation formula to determine the amount each insurer would be required to pay. TWIA now says it will adjust amounts previously paid for Harvey by using the 2018 assessment percentages for each insurer. The second assessment was made in 2020 and TWIA used the 2019 to determine the amount each insurer paid. TWIA has stated it will adjust this using the 2020 percentages when those become final either at the end of this year or in 2021.

The statutory scheme contemplates each insurer should have been assessed on its percentages in the catastrophe year when the loss occurred. This would be consistent with HB 1900 changes and also consistent with other provisions that require incentives to encourage more voluntary writings. If this rule is not changed as part of the current rule making process, insurers will be encouraged to write less business after a storm in order to reduce their percentage of participation for assessments made in subsequent years.

TWIA Funding. AFACT and other property casualty trade groups have serious concerns about the current funding mechanism for TWIA that requires the issuance of up to \$1 Billion in debt each year when a loss exceeds certain thresholds. Documents suggesting a better method through a statewide surcharge replacing TWIA bonds has been discussed with some members and is attached here for the Committee to consider.

After Hurricane Laura hit Louisiana, instead of more of Texas, Governor Abbott said, "We dodged a bullet". The reality of this is displayed in a What If document attached. If Hurricane Laura had hit primarily over the Texas coast, including Galveston and Beaumont, losses in TWIA and private insurers would have been considerable. As shown in the What If, a \$1.8 (or Hurricane Harvey size storm) would have required TWIA to issue new Class 1, 2 and 3 bonds. A similar result would have been a loss similar to Hurricane Ike.

Based on the current political reactions to even a modest rate increase, it may be unlikely that TWIA would not be able to sustain itself and pay for over \$1 Billion in new bonds. This fact should highlight the importance of changing the current funding formula for the TWIA layer to eliminate the use of bonds.

The Committee is also urged to consider recommending a different procedure to determining TWIA rates. In past board meetings where rates have been discussed, the very vocal coastal crowds have shouted down discussion, ignored any legitimate consideration of insurance principles and TWIA's financial needs, and instead focused on maintaining the status quo and their individual grievances over TWIA's financial needs. Further, board members have been subjected

to various forms of intimidations and unfounded attacks on their personal and professional reputations. A lot of words to get to the same point but I think more appropriate for this setting. Let me know if you want to discuss. Procedures such as those used in Texas to determine benchmark or promulgated rates would afford all participants to present evidence before an impartial administrative law judge to make proposals for a final decision by the Commissioner.

For questions or additional information, please contact:

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